IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 470 of 2003

with

CIVIL APPLICATION No 9424 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHBHAI DHANSUKHLAL RANA

Versus

LAKHIBEN D/O HIRABHAI BALABHAI

Appearance:

1. Appeal from Order No. 470 of 2003

MR NV GANDHI for Appellant No.

MR JIGAR P RAVAL for Respondent No. 1

RULE SERVED for Respondent No. 2

2. Civil Application No. 9424 of 2003

MR NV GANDHI for Appellant No.

MR JIGAR P RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/09/2004

ORAL JUDGEMENT

1. This appeal from order is filed by the appellant - original plaintiff. The appellant is the original plaintiff of Special Civil Suit No.334 of 2002. The said suit is filed for specific performance of contract of sale agreement. In the said suit, the plaintiff filed an application Exh.5 praying for interim injunction restraining the defendants not to transfer or alienate the said suit property in question. The learned Civil Judge rejected the said application against which the original plaintiff has filed present Appeal From Order before this Court.

2. At the time of hearing of this Appeal From Order, Mr.M.C.Bhatt, the learned counsel, who is appearing for the respondent No.1, has fairly stated that, he has no objection if the impugned order is set aside, as, according to him, his client has not produced necessary documentary evidence since his client was not served with the process of the court. It has been pointed out that though the respondent No.2 is already served but he has not appeared before this Court and has also not appeared before the trial court.

3. Since there is a consensus between the appellant and respondent No.1, this appeal from order is allowed. The impugned order dated 10.10.2003 passed below Exh.5 in Special Civil Suit No.334 of 2002 is quashed and set aside. The matter is sent back to the learned Civil Judge for deciding Exh.5 afresh after hearing the concerned parties. It will be open to the plaintiff as well as to the defendants to produce any other additional evidence in connection with the application at Exh.5. The learned Civil Judge after hearing all the concerned parties shall decide Exh.5 application in accordance with law. This Appeal From Order is accordingly disposed of with no order as to costs. Writ to be sent to the trial court forthwith.

4. In view of the order in Appeal From Order, no order on Civil Application No.9424 of 2003.

(P.B. Majmudar, J.)

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